IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No.9009 of 2007

Nilesh Baban Mahadik ..Petitioner

vs.

Dattatray Kashinath Dhavle
and others ..Respondents

Shri C.G.Gavnekar for petitioner.
Shri S.K.Chinchalikar, A.G.P. for respondent State.

CORAM: S.C.DHARMADHIARI J.
17th December, 2007

P.C.

1. The petitioner was at the relevant time sarpanch. The panchayat consists of 9 members. 7 members issued notice desiring to convene a meeting to express "no confidence" in the petitioner. That notice was, in accordance with the Rules and more particularly section 35(1) of the Act, duly served. In response, the meeting was convened and at the said meeting the motion has been carried. Resultantly, the petitioner has been removed as a sarpanch. His Appeal also stood dismissed.

2. The order impugned before me is passed on an Appeal by the present petitioner. The appeal is against the order passed on 20th

November, 2007 by the Additional Collector, Raigad. That was heard by the Additional Commissioner and on 3rd December, 2007, the same is also dismissed.

3. The only submission of Shri Gavnekar is that the meeting may have been convened in pursuance of the Notice. However, nobody moved the "no confidence motion". In such circumstances the petitioner could not be removed as a sarpanch.

4. Reliance is placed upon section 35(1) and (2) so also sub-section (3) and Meeting rules, namely, Bombay Village Panchayat (Meeting) Rules, 1959. Reliance is also placed upon a decision of the Division Bench of this Court reported in 1997(3) Mh.L.J.27.

5. I have perused the petition and annexures thereto including the impugned order and affidavit in reply. On the last occasion I called for the original record pertaining to the meeting and the proceeding Book has been produced for my perusal by the concerned Tahsildar.

6. Having perused the minutes in their

entirety, in my view, there is no substance in the contention of Shri Gavnekar. This is not a case where the resolution was not moved at all. The motion of no confidence was moved by the required number of members who gave notice to the Tahsildar in the prescribed form. It is common ground that this notice was not withdrawn and it is not permitted to be withdrawn now by law. It is common ground that within the time stipulated by section 35(2), the meeting was convened by Tahsildar. Thus, the meeting was convened and presided over by the Tahsildar.

7. It was held on the scheduled time and date and concerned persons including those moving the Resolution were present. Tahsildar narrated to the members concerned the purpose of the meeting. It is common ground that the meeting was convened to only discuss this motion. The petitioner himself spoke and questioned all concerned. He sought explanation as to why they termed his arbitrary act and suspicious conduct so as to enable them to move the Resolution. When the petitioner himself stepped in and spoke in this manner naturally those supporting the Resolution spoke thereafter and pointed out the acts of omission and commission. There were two

members who spoke in favour of the petitioner.

8. Ultimately, there was a demand for voting and in response to the petitioner's request voting was held by secret ballot. 7 members who had moved the Resolution stood by the Resolution and 2 opposed him. Accordingly, it is carried by requisite majority. That is not even disputed before me. In such circumstances and when the substance of the matter must be looked into, in the democratic process, I find that there is no merit in the submission of Shri Gavnekar. The petitioner was fully aware of the purpose of the meeting. The petitioner was also aware of the fact that there is notice signed by 7 members. Those 7 members expressed no confidence in him. He himself volunteered to chose to address the meeting and that is how other spoke for and against the Resolution. Thus, in the peculiar facts of this case, it cannot be said that the meeting or Resolution was initiated in any manner. The meeting was convened and convening of the meeting is the aspect governed by section 55(1). In such circumstances, the Resolution was also moved. It is as if moving and convening were spoken of as distinct matter. The motion was moved by not

less than 1/3rd number of members and at the meeting the same was carried. In such circumstances, this is not a fit case for intereference in extra ordinary equitable and discretionary jurisdiction. The petition is dismissed. In the facts of this case there is no need not refer to any larger controversy.

(S.C.DHARMADHIKARI J.)